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February 25, 2016

By email to [drawls@fec.gov](mailto:drawls@fec.gov)  
and [jjordan@fec.gov](mailto:jjordan@fec.gov)

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 7004: Response of Respondents to Complaint

Dear Sirs:

Our firm represents the named respondents, The 2016 Committee, Robert H. Frank in his official capacity as Committee Treasurer, and John Philip Sousa IV,<sup>1</sup> as Committee National Chairman, in the above-referenced matter. By letter dated February 5, 2016, and received by our clients on February 11, 2016, you notified our clients that the Federal Election Commission ("FEC") had received a complaint indicating that the respondents may have violated the Federal Election Campaign Act of 1971, as amended ("FECA"), and you invited our clients' response within 15 days of the receipt of your letter.

Enclosed are (i) the Statement of Designation of Counsel, signed by Robert H. Frank as Treasurer of The 2016 Committee, and (ii) the Statement of Designation of Counsel, signed by John Philip Sousa IV as National Chairman of The 2016 Committee, designating the undersigned as counsel in this matter, in accordance with your instructions.

Please be advised that our clients wish this matter to remain confidential, in accordance with 52 U.S.C. sections 30109(a)(4)(B) and 30109(a)(12)(A).

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<sup>1</sup> The FEC's February 5, 2016 letter is written to Mr. Sousa as The 2016 Committee's National Chairman, which is correct, but that letter incorrectly identifies Mr. Sousa as a respondent in MUR 7004, which is incorrect. The 2016 Committee is the primary respondent, and the only individual respondent in a MUR such as this should be the Committee's treasurer, in his official capacity. There is no basis for identifying Mr. Sousa as a second individual respondent.

### **The Allegations in the Complaint Do Not Support Any Violation of FECA**

This matter was instituted following the filing of a letter of complaint against the respondents dated January 28, 2016, by Mr. Elihu Eli El of Spring Lake, North Carolina. Attached to Mr. El's complaint are 30 pages of exhibits (the first three pages are numbered Part 1, Part 2, and Part 3, followed by 27 pages not designated as a "Part" but numbered 1 of 27, 2 of 27, etc.). The exhibits consist of selected portions of email correspondence of Mr. El and others, together with Mr. El's interspersed commentary.<sup>2</sup>

The complaint fails to allege any violation of the Federal Election Campaign Act or the FEC's regulations. The essence of Mr. El's charge, apparently, is that the respondents:

have not adequately disclosed to potential donors that they are acting as a political action committee. These parties have used misleading publications and advertisement to misrepresent themselves as an official fundraising entity for Dr. Ben Carson for President **Most donors believe that The 2016 Committee is an official campaign component of his election.** This form of deception does not comply with federal laws. [Emphasis added.]

Insofar as the complaint is devoid of any allegation or reference to any particular federal election law or regulation within the jurisdiction of the Commission that was allegedly breached by any of the respondents, the Commission lacks jurisdiction to consider it further, and it should be dismissed. Moreover, the contention about what "most donors" believed is **completely unsupported** in the complaint and its exhibits.

As being legally and factually insufficient,<sup>3</sup> the complaint is frivolous and should be dismissed without the need for any further investigation by the Commission.<sup>4</sup>

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<sup>2</sup> There is no allegation by Mr. El that the emails are provided in complete form, or that the exhibits constitute the entirety of the correspondence or communications between him and The 2016 Committee.

<sup>3</sup> FEC Regulations require that complaints "be sworn to and signed in the presence of a notary public and shall be notarized." 11 CFR 111.4(b)(2). It is not clear that Mr. El's complaint meets this standard.

<sup>4</sup> Respondents believe that the Complaint should be dismissed on its face. However, if the Commission were to seek additional information about the communications between Mr. El and The 2016 Committee, it would learn that Mr. El knew very well that The 2016 Committee is an independent political committee making independent expenditures in support of Ben Carson's race for President of the United States, Mr. El having made certain demands on the

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### The Exhibits to the Complaint

The first three pages of the Exhibits (labeled Part 1, Part 2, and Part 3) consist of a copy of an email received by Mr. El, including a letter to Mr. El from Ben Carson describing Mr. Carson's efforts in opposition to certain proposals regarding U.S. policy with respect to resettlement of refugees and seeking Mr. El's signature on national petition, as well as financial support. The email — according to the disclaimer prominently displayed thereon — was "Paid for by Carson America, Inc." Thus, a contribution to Carson America, Inc. was solicited in this email from Carson America, Inc. Mr. El did not include a copy of the Ben Carson petition referenced in the email, and there is no indication from Mr. El as to whether or not he responded to the petition or donated money to Mr. Carson's campaign.<sup>5</sup>

Exhibit pages 1-5 of 27 consist of a one-line statement from Mr. El, accompanied by a copy of an email that Mr. El says he received from The 2016 Committee in September 2015 (although the document appears to indicate a date of 8-12-15). According to Mr. El's one-line statement, the e-mail, which has a link to the web page of The 2016 Committee, is signed by Mr. Sousa as Chairman of The 2016 Committee, and contains the disclaimer — required under FECA and the FEC regulations of fundraising and advocacy public printed communications sent by unauthorized political committees (*see* 11 CFR 110.11(b)(3), (c)(2)), and dutifully followed by The 2016 Committee — that the communication was paid for by The 2016 Committee and was "not authorized by any candidate or candidate's committee." Clearly, Mr. El's allegation regarding The 2016 Committee's identity is belied by the very document on which he relies.

Exhibit pages 1-5 appear to provide the essence of Mr. El's complaint, and contain the first indication that Mr. El himself claims to have been misled. However, an examination of these exhibits shows that they could not reasonably be misunderstood as Mr. El alleges. Mr. El's complaint reflects that he failed to read the communications he received, or that he failed to read The 2016 Committee's website he says he looked at, or that he misunderstood them, or he is pretending that he misunderstood what he read. Mr. El's complaint says one thing — but the documents say another. Thus, Exhibit page 6 is Mr. El's assertion that he made a donation "to what he thought was the Official Ben Carson campaign," yet Exhibit pages 7-8 are a copy

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Committee. In order to minimize the cost of responding to this baseless MUR, the details of those communications are omitted here.

<sup>5</sup> The 2016 Committee is well familiar with this letter, as Carson America, Inc. rented certain email addresses from The 2016 Committee to which to send this mailing. That is why the email contains transmittal information from the list owners at the outset, in accordance with professional fundraising standards and the practices of the Internet service providers (ISP) and email services, which require email list owners to include such information in an effort to prevent emails from being reported as spam.

of the email receipt that Mr. El very clearly received from The 2016 Committee, which clearly was not the "Ben Carson Committee."

Exhibit pages 9-12 are copies of pages that Mr. El says he either took or derived from The 2016 Committee's website — <http://www.2016committee.org> — listing a portion of the Committee's organizational leaders in the south. Mr. El apparently alleges that the website gives the impression of being Ben Carson's "Official Campaign Site." The respondents submit that nothing in those proffered pages and nothing in The 2016 Committee's website would support Mr. El's allegation.

Exhibit pages 13-27 consist of copies of several of Mr. El's short (one, two, or three sentences) assertions, accompanied by copies of emails, attempting or purporting to describe communications from him, to him, and to others, apparently including Mr. Randy L. Moore, Mr. Ron Robinson, Mr. Rob Robinson, and others. The point of these Exhibit pages is not clear to the respondents as nothing on the Exhibit pages contains any support for an allegation of any breach of FECA or the FEC regulations, and they do not appear to be connected to the earlier allegation that The 2016 Committee was holding itself out as an authorized campaign committee of Dr. Carson. It appears that Mr. El believes his job was put in jeopardy when a "reply-all" email was sent to him and those who had been open copied by Mr. El on his original email.

### **The Complaint Fails to Allege or Demonstrate a Violation of the FECA**

Fraudulent misrepresentations by political committees are prohibited by federal campaign finance law. *See, e.g.*, 52 U.S.C. 30124(b); 11 CFR 110.16(b). However, there is not even a scintilla of a showing that would justify any such allegation in this case. Although there is one allegation that Mr. El believed that The 2016 Committee was the official Ben Carson campaign committee, nothing in what Mr. El alleges and nothing in the documents that Mr. El has attached to the complaint would reasonably support the notion that such a subjective belief was the result of fraudulent misrepresentations. Moreover, the complaint presents no evidence whatsoever that any other person was misled in the way Mr. El claims he was. The complaint is devoid of any reasonable allegation or any demonstration whatsoever regarding a violation of FECA or the FEC regulations by the respondents.

### **The 2016 Committee's Public Communications and Website Are in Compliance with FECA and the FEC Regulations**

The very documents attached to the complaint reveal that The 2016 Committee complied with the FECA and FEC regulations. For example, the disclaimer of The 2016 Committee that very clearly appears on its email (Exhibit page 5 of 27) complies with the disclaimer requirements set forth in 11 CFR 110.11(b)(3) and (c)(2). And those admonitions regarding The 2016 Committee also appear on The 2016 Committee's website, which Mr. El

admitted that he visited. At all pertinent times, The 2016 Committee was an FEC-registered independent expenditure-only political committee maintaining a website on the Internet — accessible by members of the public without a password — which clearly and unambiguously disclosed, *inter alia*, (i) that the Committee is a political committee whose messages are not authorized by any candidate or candidate's committee, and (ii) that there is no connection between the Committee and Ben Carson and/or Ben Carson's authorized campaign committee.

Indeed, an individual who clicks onto [www.2016committee.org](http://www.2016committee.org) — which Mr. El acknowledges he went to and examined as part of his email efforts described in the complaint — is shown (at the bottom of the first page, surrounded by a very large block), the following language:

Paid for by the 2016 Committee. Not authorized by any candidate or candidate's committee. Contributions to The 2016 Committee are not deductible as charitable contributions for Federal income tax purposes.

If an individual then continued on the site, he or she would be met with a page containing the following largely written (in script) words:

We're a national grassroots movement of values-based, common sense people on a mission to make Dr. Ben Carson our next president.

If the individual then looked at the "Who We Are" section of the website, he or she would have viewed the following:

**The 2016 Committee** is the successor to the National Draft Ben Carson for President Committee. The latter was formed in August 2013 by John Philip Sousa IV, great-grandson of the renowned composer of "The Stars and Stripes Forever," to draft Dr. Carson to run for the Republican nomination for president in 2016.

Following the success of the draft committee and announcement by Dr. Carson of an official exploratory committee, the National Draft Ben Carson for President Committee transitioned to The 2016 Committee. Because of Federal Election Commission regulations, the draft committee could no longer use Dr. Carson's name in the committee's title.

The 2016 Committee's mission is to raise support and awareness of Dr. Carson's candidacy and organize a grassroots army of

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activists to propel Dr. Carson through the nomination process and into the White House.

These statements by The 2016 Committee constitute express declarations that the Committee not only began as a draft committee, but then had to change its name because it was not allowed to use Ben Carson's name in the Committee's title after Ben Carson became a candidate. Clearly, The 2016 Committee's explanations of itself and its mission are easily and readily understood.

Lastly, as a matter of common sense, any alleged effort to misrepresent itself that it was the official Carson campaign committee would have been counterproductive since The 2016 Committee — as an independent expenditure-only committee — was soliciting contributions from sources (*e.g.*, corporations) and in amounts (*e.g.*, in excess of \$2,700 per election) which were not permitted to be received by candidate committees.

#### Conclusion

For the foregoing reasons, the respondents respectfully request that the complaint against them be dismissed. We look forward to hearing from you.

Sincerely yours,



William J. Olson  
Counsel for Respondents

WJO:mm  
Enclosures

cc: The 2016 Committee

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